

AMENDED IN ASSEMBLY MARCH 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2640**

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**Introduced by Assembly Member Gipson**

February 19, 2016

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An act to amend Section ~~122405~~ *120990* of the Health and Safety Code, relating to public health.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2640, as amended, Gipson. Public health: ~~hepatitis C~~. *HIV*.

*Existing law requires a medical care provider or person administering a test for HIV to, after receiving results indicating no infection for a patient who is at high risk for HIV infection, advise the patient of the need for periodic retesting and explain the limitations of current testing technology and the current window period for verification of results.*

*This bill would additionally require a medical care provider or person administering a test for HIV to inform people who test negative for HIV infection and are at high risk for HIV infection of the effectiveness and safety of all federal Food and Drug Administration-approved methods that prevent or reduce the risk of contracting HIV, including preexposure prophylaxis and postexposure prophylaxis.*

~~Existing law, the Hepatitis C Education, Screening, and Treatment Act, sets forth provisions pertaining to education and outreach related to hepatitis C, as specified. Existing law sets forth the intent of the Legislature with regard to these provisions.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 120990 of the Health and Safety Code is*  
2     *amended to read:*

3     120990. (a) Prior to ordering a test that identifies infection of  
4     a patient with HIV, a medical care provider shall inform the patient  
5     that the test is planned, provide information about the test, inform  
6     the patient that there are numerous treatment options available for  
7     a patient who tests positive for HIV and that a person who tests  
8     negative for HIV should continue to be routinely tested, and advise  
9     the patient that he or she has the right to decline the test. If a patient  
10    declines the test, the medical care provider shall note that fact in  
11    the patient's medical file.

12    (b) Subdivision (a) does not apply when a person independently  
13    requests an HIV test from a medical care provider.

14    (c) Except as provided in subdivision (a), a person shall not  
15    administer a test for HIV infection unless the person being tested  
16    or his or her parent, guardian, conservator, or other person specified  
17    in Section 121020 has provided informed consent for the  
18    performance of the test. Informed consent may be provided orally  
19    or in writing, but the person administering the test shall maintain  
20    documentation of consent, whether obtained orally or in writing,  
21    in the client's medical record. This consent requirement does not  
22    apply to a test performed at an alternative site pursuant to Section  
23    120890 or 120895. This section does not authorize a person to  
24    administer a test for HIV unless that person is otherwise lawfully  
25    permitted to administer an HIV test.

26    (d) Subdivision (c) shall not apply when a person independently  
27    requests an HIV test from an HIV counseling and testing site that  
28    employs a trained HIV counselor, pursuant to Section 120917,  
29    provided that the person is provided with information required  
30    pursuant to subdivision (a) and his or her independent request for  
31    an HIV test is documented by the person administering the test.

32    (e) Nothing in this section shall preclude a medical examiner  
33    or other physician from ordering or performing a test to detect  
34    HIV on a cadaver when an autopsy is performed or body parts are  
35    donated pursuant to the Uniform Anatomical Gift Act (Chapter  
36    3.5 (commencing with Section 7150) of Part 1 of Division 7).

37    (f) (1) The requirements of subdivision (c) do not apply when  
38    blood is tested as part of a scientific investigation conducted either

1 by a medical researcher operating under the approval of an  
2 institutional review board or by the department, in accordance with  
3 a protocol for unlinked testing.

4 (2) For purposes of this subdivision, “unlinked testing” means  
5 blood samples that are obtained anonymously, or that have the  
6 name or identifying information of the individual who provided  
7 the sample removed in a manner that prevents the test results from  
8 ever being linked to the particular individual who participated in  
9 the research or study.

10 (g) Nothing in this section permits a person to unlawfully  
11 disclose an individual’s HIV status, or to otherwise violate  
12 provisions of Section 54 of the Civil Code, the Americans With  
13 Disabilities Act of 1990 (Public Law 101-336), or the California  
14 Fair Employment and Housing Act (Part 2.8 (commencing with  
15 Section 12900) of Division 3 of Title 2 of the Government Code),  
16 which prohibit discrimination against individuals who are living  
17 with HIV, who test positive for HIV, or who are presumed to be  
18 HIV-positive.

19 (h) After the results of a test performed pursuant to this section  
20 have been received, the medical care provider or the person who  
21 administers the test shall ensure that the patient receives timely  
22 information and counseling, as appropriate, to explain the results  
23 and the implications for the patient’s health. If the patient tests  
24 positive for HIV infection, the medical provider or the person who  
25 administers the test shall inform the patient that there are numerous  
26 treatment options available and identify followup testing and care  
27 that may be recommended, including contact information for  
28 medical and psychological services. If the patient tests negative  
29 for HIV infection and is known to be at high risk for HIV infection,  
30 the medical provider or the person who administers the test shall  
31 advise the patient of the need for periodic retesting, explain the  
32 limitations of current testing technology and the current window  
33 period for verification of results, *provide information about the*  
34 *effectiveness and safety of all federal Food and Drug*  
35 *Administration-approved methods that prevent or reduce the risk*  
36 *of contracting HIV, including preexposure prophylaxis and*  
37 *postexposure prophylaxis, consistent with guidance of the federal*  
38 *Centers for Disease Control and Prevention*, and may offer  
39 prevention counseling or a referral to prevention counseling.

40 (i) This section shall not apply to a clinical laboratory.

1     ~~SECTION 1. Section 122405 of the Health and Safety Code~~  
2     ~~is amended to read:~~

3     ~~122405. The Legislature hereby finds and declares the~~  
4     ~~following:~~

5     ~~(a) Hepatitis C is classified as a silent killer, where no~~  
6     ~~recognizable signs or symptoms occur until severe liver damage~~  
7     ~~has occurred.~~

8     ~~(b) Hepatitis C has been characterized by the World Health~~  
9     ~~Organization as a disease of primary concern to humanity.~~

10    ~~(c) Studies indicate that 1.8 percent of the population, nearly~~  
11    ~~4 million Americans, carry the virus HCV that causes hepatitis C.~~  
12    ~~In California, as many as 500,000 individuals may be carriers and~~  
13    ~~could develop the debilitating and potentially deadly liver disease~~  
14    ~~associated with hepatitis C in their lifetime. An expert panel,~~  
15    ~~convened in March by the National Institutes of Health (NIH),~~  
16    ~~estimated that 30,000 acute new infections occur each year in the~~  
17    ~~United States, and only 25 to 30 percent of those are diagnosed.~~  
18    ~~Current data sources indicate that 8,000 to 10,000 Americans die~~  
19    ~~from hepatitis C each year.~~

20    ~~(d) Studies also indicate that 39.4 percent of male inmates and~~  
21    ~~54.5 percent of female inmates in California correctional facilities~~  
22    ~~have hepatitis C, 26 times higher than the general population. Upon~~  
23    ~~their release from prison, these inmates present a significant health~~  
24    ~~risk to the general population of California.~~

25    ~~(e) It is the intent of the Legislature to study the adequacy of~~  
26    ~~the health care delivery system as it pertains to hepatitis C.~~

27    ~~(f) It is the intent of the Legislature to urge the department to~~  
28    ~~make funds available to community-based nonprofit organizations~~  
29    ~~for education and outreach with respect to the hepatitis C virus.~~